IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 368 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKINA AMANULLAKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 368 of 2001

MR ASIT M MEHTA for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

Mr ...Jadeja for Respondent No. 2 (on record)

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/02/2002

ORAL JUDGEMENT

This is a revision application filed by the petitioner-original complainant before the learned

Judicial Magistrate First Class, Wankaner in Rajkot District under section 397 read with section 401 of the Code of Criminal Procedure, 1973. (for short, 'the Code'). The petitioner appears to have filed criminal case No.12/01 before the said Court against one Mr P B Zala, who is shown as respondent no.2 in this revision. There the petitioner had alleged that the said respondent-original accused had committed offence punishable under section 504, 506(2) and 294 of IPC. It was also alleged that there were some previous proceedings filed by the petitioner wherein he was required to file revision application and, therefore, the petitioner was required to file affidavit. That therefore, the petitioner had gone to the Court at Wankaner and, there she wanted to have the affidavit affirmed. That at that time, the contesting respondent being original accused before the trial court, started abusing the petitioner in a bad language. That it was about 3 p.m. and the contesting respondent also shouted at the petitioner that she should be beaten rigorously. That the contesting respondent had also given abusive words to her and she had been threatened by the contesting respondent in the court itself. That the two sisters of the petitioner - Hasinaben Pathan and Mumtaz Pathan were also present when the said incident took place. On the aforesaid set of facts, the petitioners moved the aforesaid complaint before the trial court on 25.6.2001.

2. Learned Magistrate, after receiving the complaint of the petitioner, recorded verification of the petitioner on oath. After recording the verification of the petitioner on oath, the learned Magistrate passed an order on the same date i.e. on 25.6.2001 that the complaint be taken up for enquiry and be registered. That with a view to have assistance of police machinery, the complaint be referred under section 202 of the Code for investigation before the police station concerned and, therefore, the complaint was referred to the police station for investigation under section 202 of the Code.

3. Feeing aggrieved by the said order of the trial court, the petitioner being the original complainant has preferred this revision before this court. It has been contended by the learned Advocate for the petitioner here that the trial court ought to have issued process without referring the matter for investigation under section 202 of the Code and, therefore, the order passed is illegal and requires interference by this court in this revision. It is also contended in the revision memo that the learned Magistrate was also a witness to the incident and

yet he has not taken cognizance of the offence. It is further contended that even the sisters of the petitioner were present before the Court in whose presence the offence has been committed. That therefore also the trial court was not justified in referring the complaint to the police station for investigation. That therefore, the order of the trial court is illegal, perverse and deserves to be quashed and set aside.

4. The petitioner, therefore, prays that the aforesaid order of the learned Magistrate may be set aside and he may be directed to take "right adoption of law" and he should be directed to issue process directly on the complaint of the petitioner. On receiving the revision application, rule was issued and one Mr Jadeja, learned advocate made submission that he would appear in the matter. However, it seems that the details of the initials of Mr Jadeja were not brought on record and, therefore, his name may not have been shown on the daily board today. Any way, the arguments advanced by the learned advocate for the petitioner as well as the learned APP Mr B D Desai have been heard.

5. Learned Advocate for the petitioner has argued at length that the learned Magistrate himself was a witness to the event in question. However, neither the complaint nor the verification says that the learned Magistrate was a witness to the aforesaid event. Any way, this would be the subject matter of enquiry by the police station concerned under section 202 and it may be open to the present petitioner to inform the said police station that the learned Magistrate himself was an eye witness to the incident in question and if that is done, the said Police Officer will naturally do the needful in the matter.

6. It is next contended by the learned Advocate for the petitioner that the learned Magistrate ought to have issued process directly against the petitioner and the learned Magistrate should not have postponed the issuance of process and should not have entrusted the investigation to the police station.

7. Section 202 of the said Code is very clear that with a view to ascertain the truth in the complaint, the learned Magistrate has two options after recording verification of the complaint on oath. The Magistrate can himself investigate the case under section 202 of the Code. Same way, Magistrate can also refer the matter for investigation to the concerned police station under section 202 of the Code. Therefore, in the present case, the learned Magistrate did not find it proper to directly

issue process against the contesting respondent, but the learned Magistrate found it proper to entrust the matter to the police station for investigation under section 202 of the Code. Therefore, the order passed by the learned Magistrate was well within his jurisdiction and he was empowered to pass the said order. Therefore, the order impugned in this revision application cannot be treated to be illegal. Another argument advanced by the learned Advocate for the petitioner is that the learned Magistrate should have taken quick steps and the learned Magistrate has failed in exercising the said powers of taking quick steps in the matter. If we go through the record, we find that the complaint is dated 25.6.2001. The offence is said to have been committed on the same day itself. The complaint was filed on the same day and the order for enquiry by the police station dated 202 of the Code has also been passed on the same day after recording verification on oath. Therefore, necessary orders have been issued by the learned Magistrate on the same day and it cannot be said that the learned Magistrate has not taken quick steps.

8. It is further contended by the learned Advocate for the petitioner that though the report was called for on or before 25.7.2001, the report was not received and, therefore, the learned Magistrate ought to have sent reminders to the police station. Now it is a fact that the complaint was filed on 25.6.2001 and the report was required to be submitted within a month i.e. on 25.7.2001. However, the revision application has been filed by the present petitioner on 24.8.2001. Therefore, it is not very clear as to whether the police has now completed investigation and has submitted report or the investigation is incomplete. It is also not clear as to whether or not the learned Magistrate had sent reminders to the police station for expeditiously submitting the final report in the matter. Therefore, even from that angle, no illegality can be said to have been committed by the learned Magistrate. It is further contended by the learned Advocate for the petitioner that the Investigating Officer should be called and inquired about the progress made by him in the aforesaid investigation. Learned APP has made a statement that since the revision was filed and rule was issued, the police station may be in a dilemma as to whether or not to proceed further with the investigation. However, we do not have any material to show whether investigation has been completed or it is pending or it has not been started at all. Any way, this court can certainly direct the police station to expedite investigation and submit the report as expeditiously as possible. This Court can also direct the learned

Magistrate to see that the matter is not delayed after receiving the report from the Police Investigating Agency. However, even from that angle, the order of the Court referring the complaint to the police station under section 202 of the Code cannot be turned down as illegal even for the aforesaid reason. It is further to be considered that though there is no mention in the complaint or in the oral verification on oath by the complainant that the learned Magistrate was an eye witness to the incident in question, the petitioner has stated in para 7 of the revision memo that the incident in question has happened in the court room and the learned JMFC was also a witness of the incident in question. Now if the offence has been committed wherein the Magistrate himself is a witness, then on the contrary, it would be in the fitness of things for the Magistrate to refer the complaint to police station. Therefore, even from that angle, the learned Magistrate can be said to have committed no illegality by referring the complaint to police station. Even otherwise, the learned Magistrate was not bound to take cognizance of the offence soon after the complaint was received.

9. Moreover, the contesting respondent, or the original accused in the aforesaid matter, is shown to be working as clerk of the Magistrate Court at Wankaner and, therefore, he seems to be a public servant and the offence is said to have been committed by the contesting respondent-original accused in the court room itself. In above view of the matter also, it cannot be said that the learned Magistrate ought to have issued process against him and the learned Magistrate should not have postponed the issuance of process against this public servant working in the court when the offence is said to have been committed in the court room itself. It has also been contended by the learned Advocate for the petitioner that the learned Magistrate has saved the skin of the contesting respondent by not issuing process against him. Now it is a fact that the complaint has not been dismissed under section 202 of the said Code. Issuance of process has been postponed and enquiry has been entrusted to the police station. It, therefore, cannot be said that the learned Magistrate has tried to save the skin of the contesting respondent by not issuing process at the first instance. It is further contended that the learned Magistrate has not examined the two sisters of the petitioner, who were present when the complaint was filed. There is no mention on record that the petitioner wanted to examine those two sisters before the Court concerned and the learned Magistrate had refused to examine them. In that view of the matter the order of

the learned Magistrate cannot be termed as illegal on this aspect also.

10. In other words, the learned Magistrate had power and jurisdiction to entrust the complaint for investigation under section 202 of the Code to the police station. The said order has been passed by him and particularly when the revision memo shows that the learned Magistrate himself was a witness, it was not proper for him to issue process or keep the investigation with him under section 202 of the Code. Therefore, the order passed by him for entrustment of the investigation to the police station under section 202 cannot be treated to be illegal and perverse. When the petitioner has filed this revision and when the order of the learned Magistrate is not found to be illegal and perverse, it would not be open for this court to interfere with the order of the trial court. Therefore, there is no merit in this revision and it is required to be dismissed.

11. For the foregoing reasons, this revision is ordered to be dismissed. Rule is discharged. However, it is directed that the learned Magistrate will expedite the hearing and disposal of the report of the Investigating Agency if and when received by him. If the report of the Investigating Officer is against the petitioner then, naturally, the learned Magistrate will be required to hear the petitioner before accepting the said report. Same way, if the investigation has not been concluded by the police station concerned, the said police station shall expedite the investigation and submit the final report as early as possible.

Date: 26.2.2002 [D P Buch, J.]
msp